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v. *Vanderbeck*, 30 N. J. Eq. 265, see also *Miller v. Tharel*, 75 N. C. 148, where the maker was not liable on a note assigned to P. after a supposed surrender by the payee to the maker.

WATERS AND WATER COURSES—NAVIGABLE RIVERS—RIPARIAN RIGHTS.—In an action of ejectment, where a statute provided that so much of the common law of England is in force as is applicable and not inconsistent with the constitution of the United States or with the constitution and statutes of Nebraska, where the Missouri river suddenly changed its course, leaving an abandoned river bottom between the former high-water mark and the middle of the former channel, *held*, that the common law relating to the rights of riparian owners is applicable, is not unconstitutional, and the riparian owners are entitled to the possession and ownership of the soil formerly under the water as far as the thread of the stream, and may maintain ejectment to oust squatters within such limits. *Kinkead v. Turgeon et al.* (1906), — Neb. —, 109 N. W. Rep. 744.

This case was first heard by the Supreme Court of Nebraska in 1905, and the law then announced that the rights of a riparian owner on navigable streams are bounded by the banks of the river, the ownership of the bed being in the state. A rehearing is allowed on account of the great public importance of the questions involved, which now come before the court for the first time. The decisions of the courts of the different states are in irreconcilable conflict. Much of the confusion has no doubt arisen from the difference in point of view taken by the courts as to the applicability of the common law, based upon the differences in length, volume and navigability of the rivers of America above tide water as compared with the inconsiderable extent of English rivers. Generally the common law rule has been rejected in the western states, and to these may be added Pennsylvania, Virginia, North Carolina, Alabama, Florida, Texas, Tennessee, Iowa, Minnesota and Missouri. The United States Supreme Court has, in a number of cases, announced and confirmed the law to be that by the admission of the several states, whatever right the United States had to the bed of navigable rivers passed to the state, and the question whether the bed of such streams belongs to the state or to the riparian owner is to be determined by the local laws of each state. *Barney v. Keokuk*, 94 U. S. 324; *St. Louis v. Myers*, 113 U. S. 566; *Hardin v. Jordan*, 140 U. S. 371, 11 Sup. Ct. Rep. 808; *St. Anthony Falls Co. v. Water Commissioners*, 18 Sup. Ct. Rep. 157. The proposition is, therefore, conclusively established that the common law as to the rights of riparian owners on navigable streams is not in conflict with the Constitution of the United States. It follows that the rule does not contravene a provision such as is found in the Constitution of the State of Nebraska, and as no legislation has been had on the subject, the way is clear for the courts to adopt the common law, if applicable to local conditions. It has been declared by the U. S. Supreme Court in *Jefferis v. East Omaha Land Co.*, 134 U. S. 178, that the rule that owners of land bounded by streams are entitled to additions to their land formed by accretions is applicable to the Missouri river, notwithstanding the peculiar char-

acter of that stream whereby changes in its banks are great and rapid. Also *Jones v. Soulard*, 24 How. 41. The court assumes that if no injury is done to the public right by adopting that rule in cases of simple accretions the public cannot be injured by the application of the common law doctrine as affecting the riparian owner's right to the bed of the stream in cases where the river has suddenly left its bed and sought a new one. The effect is the same in both cases. The decision is of great importance in that it lays down the law that in Nebraska the title to the beds of fresh-water navigable rivers is not in the state but in the riparian owner, and is interesting, in a way, as showing how readily a court will reverse itself when given notice of a former erroneous decision.

WITNESSES—IRRELEVANT QUESTIONS—CONTEMPT IN REFUSING TO ANSWER. —Certiorari to review a judgment committing the petitioner for contempt of court. *Held*, that the fact that certain questions put to the petitioner as a witness were irrelevant could furnish no basis for impeaching his commitment for contempt in refusing to answer them. *Ex parte Butt* (1906), — Ark. —, 93 S. W. Rep. 992.

This is undoubtedly the better and prevailing rule. There are, however, authorities to the contrary. The case of *Ex parte Zeehandelaar*, 71 Cal. 238, was a case of habeas corpus proceedings to impeach the commitment of the petitioner for contempt in refusing to answer irrelevant questions. The Code of California provides that "a witness must answer questions legal and pertinent to the matter in issue" (Code Civ. Proc. § 2065) and asserts it to be the right of the witness "to be examined only as to matters legal and pertinent to the issue" (*id.* § 2066). In releasing the petitioner the court, referring to the code says, "Such being his right, we think it follows that the refusal to answer a question not pertinent to the issue was no contempt, and that the order adjudging him guilty of the contempt which fails to show that the question was pertinent to the issue was invalid." See also *Ex parte Henshaw*, 73 Cal. 510. These decisions are doubtless governed by the peculiar provisions of the California Code above referred to. Similar provisions have been incorporated in the codes of a few of the states. Supporting the ruling in the case just quoted from, see *Re Rogers*, 129 Cal. 468; *People v. Glaze*, 139 Cal. 154; *Ex parte Jennings*, 60 Ohio St. 319; *Ehrman v. Ehrman* [1896], 2 Ch. 826; *Gihon v. Albert*, 7 Paige 278; *Holman v. Mayor of Austin*, 84 Tex. 668; *In re MacKnight*, 11 Mont. 126. In CHURCH ON HABEAS CORPUS, 2nd Ed. § 332, it is said, "But it is no contempt to refuse to answer an impertinent question, or one which cannot properly be asked, that is, one not pertinent to the issues involved, or improper for some other reason; and if the witness is committed for such refusal he will be discharged on Habeas Corpus." The learned author says in the note, "In such cases there is want of jurisdiction," which seems to be the principle adhered to by courts taking this view. See California cases cited, *supra*, and others. In the light of other cases, however, the better view seems to be that the mere fact that questions put to the witness are irrelevant or improper will not deprive the court of its *jurisdiction* to commit for contempt in refusing to